No. 85-1568

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

RANDOLPH ARTIS, PETITIONER
v.
UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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1 page

QUESTION PRESENTED

Whether petitioner's confessions and consent to a search of his house and car were voluntary.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 7

Conclusion 12

TABLE OF AUTHORITIES

Cases:

Blackburn v. *Alabama*, 361 U.S. 199 10

Culombe v. *Connecticut*, 367 U.S. 568 8

Darwin v. *Connecticut*, 391 U.S. 346 8

Frazier v. *Cupp*, 394 U.S. 731 8

Greenwald v. *Wisconsin*, 390 U.S. 519 8

Lego v. *Twomey*, 404 U.S. 477 7

Miller v. *Fenton*, No. 84-5786 (Dec. 3, 1985) 7-8

Mincey v. *Arizona*, 437 U.S. 385 8

Miranda v. *Arizona*, 384 U.S. 436 ..... 3, 4, 5

Moran v. *Burbine*, No. 84-1485 (Mar. 10, 1986) 8

People v. *Connelly*, 702 P.2d 722, cert. granted, No. 85-660 (Jan. 13, 1986) 11

Schneckloth v. *Bustamonte*, 412 U.S. 218 ..... 7, 8

Page

Constitution and statute:

U.S. Const. :

Amend. IV 7

Amend. V 7

Uniform Code of Military Justice, 10 U.S.C. (& Supp. II) 801 *et seq.* :

Art. 31(b), 10 U.S.C. 813(b) 4

Art. 66(c), 10 U.S.C. 866(c) 6

Art. 118, 10 U.S.C. 918 1

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OPINIONS BELOW

The order of the United States Court of Military Appeals (Pet. App. 12) is unreported. The opinion of the United States Army Court of Military Review (Pet. App. 13-22) is unreported.

JURISDICTION

The judgment of the United States Court of Military Appeals (Pet. App. 12) was entered on February 4, 1986. The petition for a writ of certiorari was filed on March 24, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. (Supp. II) 1259(3).

STATEMENT

Petitioner, a member of the United States Army, was convicted by a general court-martial of the premeditated murder of his wife, in violation of Article 118, Uniform Code of Military Justice (UCMJ), 10 U.S.C. 918. He was

sentenced to death, a dishonorable discharge, the total forfeiture of pay, and a reduction in rank. The Army Court of Military Review reduced his sentence from death to confinement at hard labor for life, but it affirmed his conviction and sentence in all other respects (Pet. App. 13-22). The Court of Military Appeals summarily affirmed (Pet. App. 12).

1. The evidence adduced at trial, the sufficiency of which is not in dispute, showed that petitioner murdered his wife during the late evening hours of September 16, 1982, by hitting her several times in the back of the head with a baseball bat while she was asleep in bed. The murder stemmed from a history of marital discord and domestic violence between petitioner and his wife, as well as petitioner's apparent belief that his wife had been unfaithful to him (*e.g.*, Tr. 1070, 1083-1084, 1093-1094, 1118-1119, 1159-1164; GXs 30 & 31).

a. During the early morning hours of September 17, 1982, the nude body of a black female was discovered along a roadside in Fort Campbell, Kentucky (Pet. App. 14-15; Tr. 658-660; GX 12). The victim, who was later identified as petitioner's wife, had suffered a severe injury to the back of her skull, which was broken into several pieces (Tr. 738; GX 25). Her death was caused by multiple blows to the skull from a baseball bat (GX 24).

Agent Myers of the Army's Criminal Investigation Division (CID) attempted to locate petitioner to inform him of his wife's death (Pet. App. 15). While doing so, Agent Myers spoke with the victim's supervisor, friends, and coworkers, and he learned that petitioner had made telephone calls at 9:30 p.m. the previous evening and at 8:30 a.m. earlier that morning, purportedly to locate his wife (Tr. 73-74, 446). At roughly 10:00 a.m., petitioner went to the military police office, where he told Staff Sergeant Blevins

that his wife had been missing since 10:00 p.m. the previous night (Tr. 343-344; see Pet.App. 15).[1] Sergeant Blevins contacted the CID office and was told that someone would be there shortly (Tr. 344). Although petitioner appeared slightly nervous, overall he was calm and was neither confused nor disoriented (Tr. 345).

Agents Myers and Griffith arrived at the MPI office shortly thereafter (Tr. 76, 345). Agent Myers told petitioner of his wife's death and asked when he had last seen his wife. Petitioner responded that his wife had left their house at about 9:30 p.m. the night before (Tr. 76-77). Petitioner asked to see his wife, and Agents Myers and Griffiths escorted him to the morgue to identify her body (Tr. 78-79, 109, 447). Petitioner became emotional when he saw his wife's body, and he cried during the entire return trip to the CID office (Tr. 110, 260-261, 349-350, 447).

After returning to the CID office, the agents learned that other CID agents, who had been sent to petitioner's quarters to find out if he was home and to begin an investigation in the neighborhood (Tr. 232; see Tr. 443-446), had discovered tire tracks in the rear of petitioner's house and blood stains on the patio. These facts, along with others,[2] led the agents to suspect that petitioner had been involved in his wife's death (Tr. 107-108). Agent Myers then arrested petitioner, told him that he was under arrest for the murder of his wife, and advised him of his *Miranda* rights (Pet. App.

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[1]Petitioner had been searching for his wife with a friend before he arrived at the military police station (Tr. 330-331).

[2]Petitioner and his wife had a history of domestic trouble. There was a discrepancy between the time petitioner told the agents that he had last seen his wife and the time petitioner had told his wife's friends he had seen her. Pet. App. 15; Tr. 76-78; see also Tr. 443-446.

15; Tr. 448).[3] Because of the seriousness of the crime, and because petitioner was noticeably upset, Agent Myers repeated each portion of the warnings until petitioner orally acknowledged that he understood them and had initialed the form used by Agent Myers (Pet. App. 16; Tr. 110-111, 264-266, 274-275, 448). Petitioner agreed to waive his rights and to answer questions, and he then waived his rights in writing (GXs 1, 5).

Petitioner was questioned, with interruptions, from roughly 2:00 until 5:30 p.m. by Agents Myers and Griffiths (Pet. App. 16; Tr. 89, 93, 449). In the course of the interview, petitioner admitted having murdered his wife.

Throughout the interview, the agents spoke with petitioner in a sympathetic, conversational manner, and they provided him with food, soft drinks, and cigarettes (Pet. App. 16; Tr. 90, 91, 93, 269, 276).[4] On several occasions, petitioner became upset and cried, and on each occasion the agents interrupted the interview to allow petitioner to regain his composure (Tr. 91-92, 276, 449). At no time did petitioner ask to discontinue the interview or refuse to answer any questions (Tr. 92).[5]

During the interview, the agents took notes of petitioner's statements. After the agent's notes were reduced to writing (Tr. 450), petitioner was given an opportunity to read the statement. He then initialed each page and signed an affidavit summarizing his confession (Tr. 278-279, 450; GXs 1,

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[3]See *Miranda* v. *Arizona*, 384 U.S. 436 (1966); Art. 31(b), UCMJ, 10 U.S.C. 831(b).

[4]During the questioning, the agents' weapons were locked in a safe. While the agents were aware of petitioner's past suicide attempt, they were also concerned with the legal problem of exposed weapons during the investigation (Tr. 266-267).

[5]At one point during the interview, petitioner asked if he could have a lawyer. He was told that he could speak with one immediately, if he wished, but petitioner decided to continue with the interview (Pet. App. 16; Tr. 449-450).

5; see Pet. App. 16). The agents then asked petitioner if he would consent to a search of his house and automobile. The agents advised him that he was not required to consent to the search, that his waiver of his right to remain silent did not require him to consent to the search, and that any evidence discovered during the search could be used against him (Tr. 96-97, 451). Petitioner agreed to the search, and he executed a written form giving his consent (Tr. 97; GXs 3, 4). Petitioner then agreed to show the agents the location where he had left his wife's body and the route he took from there to his quarters (Tr. 99).

Petitioner was thereafter taken to a detention cell at the military police station, where he was visited by his commander, Major Wyatt, who wanted to know how to notify his wife's next of kin (Pet. App. 17; Tr. 377-378). Petitioner was remorseful and emotional, and was somewhat slow in responding to Major Wyatt's inquiries, but he did not exhibit an inability to understand his situation or Major Wyatt's reasons for speaking with him (Pet. App. 17; Tr. 375-376, 385). Because of petitioner's remorseful, depressed state, and since petitioner had attempted suicide several months earlier, Major Wyatt recommended to the commander of the base detention facility that petitioner be placed in a segregated cell during his pretrial confinement and be kept under observation on a 24-hour basis (Pet. App. 17; Tr. 380, 452).

Two days later, on September 19, Agents Myers and Griffiths visited petitioner at the base detention facility in order to learn whether anyone had helped him dispose of his wife's body (Pet. App. 17; Tr. 100, 280-281). Agent Myers readvised petitioner of his *Miranda* rights and told petitioner that he was not required to answer any questions, even though he had done so previously (Tr. 100, 453).

Petitioner again waived his rights and agreed to speak with the agents (Tr. 101). During the interview, petitioner again admitted that he had killed his wife (Pet. App. 17; Tr. 102). After petitioner's statement was reduced to writing (GX 6), petitioner initialed some corrections made on the statement, but he declined to sign it (Pet. App. 17; Tr. 102-103, 453).

b. Before trial, petitioner moved to suppress his statements to the investigating officers, as well as the evidence seized from the vicinity of his home, on the ground that his statements and his consent to the search were involuntary. After an evidentiary hearing, the trial judge denied his motion and issued an oral ruling containing detailed findings of fact (Tr. 441-463). The trial court ruled that petitioner's September 17 statement was voluntary in its entirety (Tr. 463) and that his September 19 statement was therefore not tainted by his earlier confession (Tr. 458). Although petitioner was "at times emotionally distraught" when he gave his first statement (Tr. 457), the court found that he "willingly cooperated" with the agents and "was motivated by his own conscience and desire to get the matter off his chest" (Tr. 458). The court also found that much of the evidence acquired near petitioner's home was discovered independently of his statements and his consent to the search (Tr. 454-456, 457). In any event, the trial court found, by clear and convincing evidence, that petitioner's consent to the searches was voluntary (Tr. 457).[6]

2. On appeal, the court of military review independently reviewed the evidence relating to petitioner's confessions and his consent to the search.[7] From that review, the court

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[6]Based on the information related by petitioner during the September 17 interview, one of the investigating officers applied for and received a search warrant for petitioner's house and car (Tr. 155-157). The trial court stated that, in light of its ruling that petitioner validly consented to the search of his house and car, the question whether the warrant was valid was moot (Tr. 463).

[7]Art. 66(c), UCMJ, 10 U.S.C. 866(c), authorizes the court of military review to "weigh the evidence, [and] judge the credibility of witnesses."

concluded that petitioner's statements were voluntary and that petitioner was mentally competent to make a knowing and intelligent waiver of his rights. Pet. App. 12-22.

ARGUMENT

Petitioner contends (Pet. 5-9) that his statements to the investigating agents and his consent to the search of his house and car were involuntary because, at the time that he uttered those statements, he was emotionally distressed and was suffering from a personality disorder.

Whether a suspect's statements and his consent to a search are voluntary turns on the totality of the circumstances. See, *e.g.*, *Miller* v. *Fenton*, No. 84-5786 (Dec. 3, 1985), slip op. 8; *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 233 (1973). The government bears the burden of establishing voluntariness by a preponderance of the evidence. See *Lego* v. *Twomey*, 404 U.S. 477 (1972). In this case, the courts below considered all of the facts surrounding petitioner's statements, including those recited in the petition, in concluding that his statements and consent were voluntarily given and that his waivers of his Fifth and Fourth Amendment rights were valid (Pet. App. 12, 14, 19-20; Tr. 441-463). Petitioner does not argue that the lower courts applied the wrong legal standard; rather, his claim is simply that the lower courts were wrong in concluding that his statements and consent were voluntary. That fact-bound claim does not warrant review by this Court.

Petitioner argues (Pet. 5-8) that his statements and consent were involuntary, because that the interviewing agent's noncoercive questioning, combined with petitioner's emotional distress and abnormally passive personality, unfairly overcame petitioner's will. However, a "sympathetic" or "friendly" manner of questioning (Pet. 6, 8) is not an interrogation technique that is "so offensive to a civilized system of justice that [it] must be condemned" (*Miller* v. *Fenton*,

slip op. 5), even when a suspect is willing to confess his guilt. See *Frazier* v. *Cupp*, 394 U.S. 731, 738, 739 (1969); *Culombe* v. *Connecticut*, 367 U.S. 568, 576 (1961) (opinion of Frankfurter, J.) ("a confession made by a person in custody is not always the result of an overborne will. The police may be midwife to a declaration naturally born of remorse, or relief, or desperation, or calculation"). Although petitioner became distraught upon viewing his wife's body at the morgue, he had regained his composure by the time he was escorted back to the CID office. The interviewing agent meticulously advised petitioner of his constitutional and statutory rights (Pet. App. 16), which is "a circumstance quite relevant to a finding of voluntariness" (*Frazier* v. *Cupp*, 394 U.S. at 739; see also *Schneckloth*, 412 U.S. at 249). Petitioner did not refuse to answer any questions, and he did not request that the interview be terminated. Petitioner was not threatened, deprived of food or rest, or subjected to physical or psychological harm. Nor was he subjected to coercion, intimidation, or trickery of any kind, interrogated repeatedly or for an unduly long period, or induced to confess through promises of leniency. Compare, *e.g.*, *Mincey* v. *Arizona*, 437 U.S. 385, 401 (1978) (statements were the product of the "virtually continuous questioning of a seriously and painfully wounded man on the edge of consciousness"); *Darwin* v. *Connecticut*, 391 U.S. 346, 347-348 (1968) (suspect held incommunicado for 30-48 hours, subjected to extensive questioning, and denied the opportunity to consult with counsel); *Greenwald* v. *Wisconsin*, 390 U.S. 519, 520-521 (1968) (suspect deprived of counsel, food, sleep, medication, and adequate warnings as to constitutional rights); see generally *Schneckloth*, 412 U.S. at 226. The interviewing officer's conduct therefore cannot be deemed "violative of canons fundamental to the 'traditions and conscience of our people' " (*Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), slip op. 18 (citation omitted)).

In claiming that his statements and consent were involuntary, petitioner relies heavily (Pet. 4-7) on the testimony of a defense psychiatrist, who testified at the pretrial suppression hearing that petitioner suffered from a personality disorder. However, the trial court found (Tr. 457-458) that, although petitioner was "at times emotionally distraught," he willingly cooperated with the interviewing agents, and his confession was "motivated by his own conscience and desire to get the matter off his chest." In addition, although the defense psychiatrist was the only expert witness who testified at the pretrial suppression hearing,[8] on cross-examination he revealed that he was unaware of all the circumstances of petitioner's confession at the time he examined petitioner, and he agreed that his opinion might have been different had he known all those circumstances.[9]

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[8]The testimony of the defense psychiatrist was not as strong as petitioner suggests. He did not testify that petitioner was incapable of understanding his surroundings or the consequences of his actions. Rather, he stated that petitioner suffered from three disorders: (1) a mixed personality disorder with depressive and paranoid features (Tr. 290), which entailed blaming others for petitioner's unhappiness and depression (Tr. 292-293); (2) a severe adjustment disorder (Tr. 290), which he defined as "a response to a normal impulse or a real life stimulus * * * that is special, a response that is over and above what would be expected of * * * any * * * person in a situation" (Tr. 291-292); and (3) a "marital conflict" (Tr. 291), which he defined as "straight-forward * * * basically, you have a conflict with your spouse" (Tr. 291). In addition, a report on which the defense psychiatrist relied found that petitioner's cognitive abilities were well within normal limits, except in areas of social judgment (GX 29). The psychiatrist also stated that petitioner's emotional reaction to viewing his wife's body was a normal response (Tr. 316).

[9]The defense psychiatrist was unaware that petitioner had attempted to cover up his involvement in his wife's murder by acting as if he did not know where she was (Tr. 322-323). He agreed that he would have been less likely to conclude that petitioner could not have freely confessed if he had been aware of that fact (Tr. 323). He also did not know that petitioner subsequently cooperated with the detention facility commander in order to be placed among the general population at the facility (Tr. 320), which he stated could indicate an ability freely and voluntarily to make a decision (Tr. 322).

The defense psychiatrist also modified his opinion by the time of trial.[10]

A prosecution psychiatrist testified at trial that at the time of the crime petitioner did not suffer from any mental disease or malfunction that "could be expected to significantly impair a person's ability to either control his actions or to recognize the nature of what he's involved in" (Tr. 1224). The prosecution psychiatrist added that petitioner had acted in a "purposeful, thought out [*sic*], and decided upon" manner during the murder and during his later attempts to cover up the crime (Tr. 1228; see also Tr. 1228-1229, 1237, 1249-1250, 1256, 1261, 1265-1266).[11] Therefore, the evidence relevant to the issue whether petitioner suffered from a mental disorder was not "unrebutted," as he maintains (Pet. 8). Finally, petitioner's own testimony at the suppression hearing indicated that he understood the events at the time he made his first statement, as well as the

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[10]At trial, he testified that the essence of petitioner's mental problem was that "he processes information and deals with certain kinds of events in his life in certain stereotypical ways for him" (Tr. 976) and that petitioner had an "inability to behave as a complete adult" (*ibid.*; see Tr. 982). He also stated that petitioner's efforts to cover up his crime showed "to some extent that he was able to think at that point, and he was able to act and to attempt to cover up his crime" (Tr. 1045). He also agreed that the diagnostic manual on which he relied to give his opinion of petitioner's mental state "has a lot of strange things that are called mental diseases or defects within the meaning of [the manual] that are not so strange" (Tr. 1047).

[11]Evidence adduced at trial may also be considered in determining whether a suspect's statements are voluntary. *Blackburn* v. *Alabama*, 361 U.S. 199, 209-210 (1960).

consequences of his actions.[12] Accordingly, the lower courts' rulings that petitioner's statements and consent to the search were voluntary do not merit further review.[13]

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[12]For instance, petitioner testified that he had initialed his statement six times (Tr. 364), that the agents read his statement to him before he signed it (Tr. 364-365), that the agents who questioned him were law enforcement agents (Tr. 366), and that he understood the purpose for their investigation at the time he was questioned (Tr. 366-367). Petitioner also admitted that he had attempted to conceal his responsibility for his wife's murder by feigning ignorance of her whereabouts (Tr. 361-362).

[13]Although petitioner's claim is similar to one that is before the Court in *Colorado* v. *Connelly*, cert. granted, No. 85-660 (Jan. 13, 1986), there is no need to hold this case pending the Court's decision in *Connelly*. In *Connelly*, there was undisputed evidence that the accused suffered from a severe mental disease; the trial court in that case found that the defendant was psychotic and that his psychosis compelled him to confess. *People* v. *Connelly*, 702 P.2d 722, 725 (Colo. 1985). By contrast, in this case there was, at best, conflicting evidence whether petitioner suffered from any mental disease, there was no evidence that he was psychotic, and the trial court did not find that petitioner suffered from any mental disease. Rather, the trial court found in this case that petitioner's confession was the product of remorse (Tr. 457-458). Accordingly, the result in this case would not be affected even if the Court should affirm the judgment in *Connelly*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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